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No. 1170.

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968.

THOMAS W. SULLIVAN,
Appellant,

vs.

ALABAMA STATE BAR, a Corporate Body; BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR; SAM W. PIPES, as President, Alabama State Bar, and as President, Board of Commissioners of the Alabama State Bar; JOHN B. SCOTT, as Secretary-Treasurer, Alabama State Bar; and WILLIAM H. MORROW, JR., as General Counsel, Alabama State Bar,
Appellees.

On Appeal from the District Court of the United States for the Middle District of Alabama.

## MOTION TO DISMISS OR AFFIRM.

TRUMAN HOBBS,
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## INDEX.


Page

Argument ..... 3

I. This Court Has Never Held That Courts Should Impose the "One-Man, One-Vote Rule" Except for Units of Government Having General Governmental Powers, and Certain Holdings of This Court and Statements by This Court Clearly Indicate That Such Rule Should Not Be Imposed on a Professional Group Such as the Alabama State Bar Association ..... 3

II. There Is No Violation of the Constitution of the United States in the Statutory Requirement of the Alabama Legislature That the President and Vice President of the Alabama State Bar Association Be Elected at the Annual Meeting of the State Bar Commission Rather Than by Mailed Ballot ..... 5

Appendix—Title 46, § 25, Code of Alabama, 1946 ... A-1


### Cases Cited.


Avery v. Midland County, 390 U. S. 474 ..... 3, 4

Baker v. Carr, 369 U. S. 186 ..... 3

Dusch v. Davis, 387 U. S. 112 ..... 5

Reynolds v. Sims, 377 U. S. 533 ..... 3

Sailors v. Board of Education, 387 U. S. 105 ..... 4


### Statute Cited.


Code of Alabama, 1940, Title 26, § 25 ..... 4


### Text Cited.


18 L. Ed. 2d 1537, 1541, 1543 ..... 3

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tary-Treasurer, Alabama State Bar; and William H. Morrow, Jr., as general counsel, Alabama State Bar, move the Court to dismiss the appeal herein or, in the alternative to affirm the judgment of the District Court for the Middle District of Alabama on the following grounds:

1. The appeal does not present a substantial federal question.

2. It is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

## ARGUMENT.

### I.

### This Court Has Never Held That Courts Should Impose the "One-Man, One-Vote Rule" Except for Units of Government Having General Governmental Powers, and Certain Holdings of This Court and Statements by This Court Clearly Indicate That Such Rule Should Not Be Imposed on a Professional Group Such as the Alabama State Bar Association.

After **Baker v. Carr**, 369 U. S. 186, **Reynolds v. Sims**, 377 U. S. 533, and several other cases requiring apportionment of state legislatures, a serious question arose whether the "one-man, one-vote" principle applied to municipal and county governments. This Court in **Avery v. Midland County**, 390 U. S. 474, extended the "one-man, one-vote" principle to a county government, but in a way which did not suggest that the principle would have application to a state bar association or other professional association. In **Avery**, this Court stated:

> "We hold today only that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographical area served by the body."

Lower courts have held consistently that "one-man, one-vote" has no relevancy to the choice of members of non-legislative offices. See Annotation at 18 L. Ed. 2d 1537, 1541, 1543. Appellant has cited no holding by any court extending the "one-man, one-vote" principle to bodies which do not have "general governmental powers over the entire geographical area served by the body."[1] The Ala-

[1] In **Avery**, the Supreme Court pointed out that the Texas county governing body had multiple and broad powers among

bama State Bar Commission clearly is not a legislative office nor does it have such "general governmental powers." Its limited powers are set out in Title 46, § 25, Code of Alabama, 1940, as amended. See Appendix of this brief.

In **Avery**, a concurring opinion pointed out that its application of "one-man, one-vote" to all bodies having general governmental power extended the principle to more than 80,000 units of government. 390 U. S. at page 499. If a bar commission and other professional associations are included within the bodies subject to the "one-mane, one-vote" principle, the number of bodies subject to the supervision of the federal courts would rival the census. In **Avery**, this Court reaffirmed its holding in **Sailors v. Board of Education**, 387 U. S. 105, commenting that **Sailors** "upheld a procedure for choosing a county school board that placed the selection with school boards of component districts even though the component boards had equal votes and served unequal populations."

In **Avery**, this Court also pointed out that one of the grounds for its holding in **Sailors** rested on the "administrative nature" of the school boards' functions.

In **Sailors**, this Court distinguished between local officers of a "non-legislative character" and officers such as legislators. 387 U. S. at p. 108. It pointed out, too, that a county board of education performs essentially administrative functions rather than governmental ones. Clearly this is true of the State Bar Commission which in addition to its administrative functions also has certain functions in disbarment proceedings which are judicial in nature. The county board of education in **Sailors** had much broader powers, some of which more nearly ap-

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which were included those of setting the tax rate for the county, equalizing assessments and issuing bonds.

proach legislative powers, than those of the Alabama State Bar Commission.[2]

In **Dusch v. Davis**, 387 U. S. 112, this Court declined to hold a malapportionment in violation of the "one-man, one-vote" principle even though the malapportionment involved units of local government with general governmental powers in the absence of a showing of "invidious discrimination." No one would seriously argue that judicial districts in Alabama were created with any "invidious discrimination" as between urban and rural counties. They were created by the state legislature and they serve as convenient districts for the administration of the judicial affairs within each district. The opinion of the three-judge court properly held that the "one-man, one-vote" principle has no relevancy to the Board of Commissioners of the Alabama State Bar Association.

## II.

**There Is No Violation of the Constitution of the United States in the Statutory Requirement of the Alabama Legislature That the President and Vice President of the Alabama State Bar Association Be Elected at the Annual Meeting of the State Bar Commission Rather Than by Mailed Ballot.**

Appellant contends that because he and all other lawyers who are members of the Alabama Bar Association must attend an annual meeting in order to vote in the election of officers that he is thereby denied equal protection under the Fourteenth Amendment of the Constitution. Appellant does not explain wherein the inequity lies. No lawyers can vote in that election other than those who attend; no

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[2] The county board of education in Michigan had many duties enumearted by this Court in 387 U. S., p. 110, fn. 7. Among those powers was the power to levy taxes.

lawyer is shown any preference or suffers any discrimination by this provision. The annual meeting is rotated among the four or five cities in the State with adequate facilities to accommodate the several hundred lawyers who attend the three-day convention.

Appellant has not cited a case from any court remotely suggesting that the method of selecting officers of a professional association at an annnual meeting rather than by mailed ballots offends the Constitution of the United States.

As the three-judge court below pointed out, it is elementary that "the equal protection clause of the Fourteenth Amendment is directed only at unreasonable or invidious differences." The equal protection clause was not intended as a strait jacket to make a constitutional prohibition out of any departure from strict uniformity. The three-judge court correctly held that appellant's attack on § 24, Title 46, of the Code of Alabama, presented no substantial constitutional question.

Appellant's efforts to extend the equal protection clause and due process clause of the Fourteenth Amendment to areas where no court has ever indicated that these principles extend do not present a substantial federal question, and this appeal should be dismissed or affirmed without requiring further argument.

Respectfully submitted,

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444 South Perry (P. O. Box 347),
Montgomery, Alabama,
Attorney for Appellees.

**Certificate of Service.**

I hereby certify that I have served a copy of the foregoing upon Mr. Fred Blanton, Jr., Suite 1627, Twenty-One Twenty-One Building, Birmingham, Alabama 35203, attorney for appellant, by mailing such copy, postage prepaid, on this the ... day of April, 1969.

.....

Truman Hobbs.